

DECLARATION AND POWER OF ATTORNEY

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name, that I believe I am an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention, design or discovery entitled:

SOFTWARE DOWNLOADING USING A TELEVISION BROADCAST CHANNEL

the specification of which is attached hereto, and that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above; that I do not know and do not believe that said invention, design or discovery was ever known or used in the United States of America before my invention or discovery thereof, or patented or described in any printed publication in any country before my invention or discovery thereof, or more than one year prior to this application, or in public use or on sale in the United States of America more than one year prior to this application; that said invention, design or discovery has not been patented or made the subject of an inventor's certificate issued prior to the date of this Application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns; and that I acknowledge my duty to disclose information of which I am aware which is material to the examination of this application in accordance with 37 C.F.R. § 1.56 (a).

I hereby claim foreign priority benefits under 35 U.S.C. § 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified any foreign application(s) for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

NONE

I hereby claim the benefit under 35 U.S.C. § 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application(s) in the manner provided by the first paragraph of 35 U.S.C § 112, I acknowledge the duty to disclose material information as defined 37 C.F.R. § 156 (a) which occurred between the filing date of the prior application(s) and the national or PCT international filing date of this application:

NONE

I hereby appoint:

Gregory M. Howison, Reg. No. 30,646

66EPT 69827150

Daniel V. Thompson, Reg. No. 29,706

Mark W. Handley, Reg. No. 36,821

Stephen S. Mosher, Reg. No. 33,974

of the firm THOMPSON & HOWISON, L.L.P., my attorneys with full power of substitution and revocation, to prosecute this application and to transact all business in the United States Patent and Trademark Office connected therewith, and to file and prosecute any international patent applications based thereon in any foreign country or before any international authorities under the Patent Cooperation Treaty.

Send Correspondence To:

THOMPSON & HOWISON, L.L.P.

P.O. Box 741715

Dallas, Texas 75374-1715

Direct Telephone Calls To:

Gregory M. Howison

at (972) 479-0462

Atty. Docket No. PHL Y-24,767

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of the First Joint Inventor: **Jeffrey Jovan Philyaw**

Inventor's Signature: _____

Date: _____

Residence (City, State): **Dallas, Texas 75225**

Citizenship: **US**

Post Office Address: **5968 West Northwest Highway #1813, Dallas, Texas 75225**

Full name of the Second Joint Inventor: **David Kent Mathews**

Inventor's Signature: _____

Date: _____

Residence (City, State): **Carrollton, Texas 75007**

Citizenship: **US**

Post Office Address: **3438 Livingston Lane, Carrollton, Texas 75007**

094183-10189
"E9827460"

ASSIGNMENT

WHEREAS, we, Jeffry Jovan Philyaw and David Kent Mathews, citizens of the U.S.A. and residents of Dallas, Dallas County, Texas 75225 and Carrollton, Dallas County, Texas 75007, have invented certain new and useful improvements in "SOFTWARE DOWNLOADING USING A TELEVISION BROADCAST CHANNEL" for which we are about to make application for United States Letters Patent; and

WHEREAS, DigitalConvergence.com Inc., a corporation of the State of Delaware, which has a business address of 4264 Kellway Circle, Addison, Texas 75244, (hereinafter referred to as "Assignee"), is desirous of acquiring our entire right, title and interest in and to the invention, and in and to said application and any Letters Patent that may issue thereon;

NOW, THEREFORE, for and in good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, we do hereby sell, assign and transfer unto said Assignee, its successors, assigns and legal representatives the full and exclusive right, title and interest in and to said invention and in and to said application and all patents which may be granted therefor, and all divisions, reissues, substitutions, continuations, continuations-in-part and extensions thereof; and we hereby authorize and request the Commissioner of Patents and Trademarks to issue all patents for said invention, or patents resulting therefrom, insofar as our interests are concerned, to said Assignee of our entire right, title and interest.

We also hereby sell and assign to said Assignee, its successors, assigns and legal representatives the full and exclusive right, title and interest to the invention disclosed in said application throughout the world, including the right to file applications and obtain patents, utility models, industrial models and designs for said invention in its own name throughout the world including all rights of priority, all rights to publish cautionary notices reserving ownership of said invention and all rights to register said invention in appropriate registries; and we further agree to execute any and all powers of attorney, applications, assignments, declarations, affidavits, and any other papers in connection therewith necessary to perfect such right, title and interest in Assignee, its successors, assigns and legal representatives.

We hereby further agree that we will communicate to said Assignee, or to its successors, assigns and legal representatives, any facts known to us respecting any improvements, and, at the expense of said Assignee, to testify in any legal proceedings, sign all lawful papers, execute all divisional, continuation, continuation-in-part, reissue and substitute applications, make all lawful oaths, and generally do everything possible to vest title in said Assignee and to aid said Assignee, its successors, assigns and legal representatives to obtain and enforce proper protection for said invention in all countries.

Name of First Joint Inventor: **Jeffry Jovan Philyaw**

Residence (City, County, State): **Dallas, Dallas County, Texas 75225**

Signature: _____

Date: _____

Date Application Executed: _____

STATE OF §

COUNTY OF § ss:

BEFORE ME, a Notary Public, on this _____ day of _____, 1999, personally appeared Jeffry Jovan Philyaw, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed same of his own free will for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this ____ day of _____ A.D., 1999.

Notary Public

Commission Expires:

Name of Second Joint Inventor: **David Kent Mathews**

Residence (City, County, State): **Carrollton, Dallas County, Texas 75007**

Signature: _____

Date: _____

Date Application Executed: _____

STATE OF _____ §

COUNTY OF _____ § ss:

BEFORE ME, a Notary Public, on this _____ day of _____, 1999, personally appeared David Kent Mathews, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed same of his own free will for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this ____ day of _____ A.D., 1999.

Notary Public

Commission Expires:

**STATEMENT CLAIMING SMALL ENTITY STATUS --
SMALL BUSINESS CONCERN**

I hereby declare that I am an official of the small business concern identified below and am empowered to act on behalf of the concern:

DigitalConvergence.com Inc.
 4264 Kellway Circle, Addison, Texas 75244

I hereby declare that the above-identified small business concern qualifies as a small business concern as defined in 37 C.F.R. § 1.9 (d), for purposes of paying reduced fees, in that (1) the number of employees of the concern including those of its affiliates, does not exceed 500 persons, and (2) the concern has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey or license, any rights in the below-identified invention to any person who could not be classified as an independent inventor if the person had made the invention, or to any concern which would not qualify as a small business concern or as a nonprofit organization. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby declare that exclusive rights to the invention have been conveyed to and remain with the small business concern identified above with regard to the invention, entitled
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and for which application for Letters Patent of the United States is to be filed of even date herewith by inventor(s), Jeffry Jovan Philyaw and David Kent Mathews.

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small business entity is no longer appropriate. (37 C.F.R. § 1.29 (b)).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and may jeopardize the validity of the application or any patent issuing thereon.

DigitalConvergence.com Inc.

By: _____
 Jeffry Jovan Philyaw

Its: Chief Executive Officer

Date: _____

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